

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

ADJUSTACAM LLC
Plaintiff

v.

AMAZON.COM, INC., *et al.*
Defendants

Case No. 6:10-cv-329-LED

JURY

**DEFENDANTS' MOTION TO SEVER AND STAY CLAIMS AS TO RESELLER
DEFENDANTS BASED ON THE CUSTOMER SUIT EXCEPTION**

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Defendants Amazon.com, Inc. (“Amazon”), Auditek Corporation (“Auditek”), Blue Microphones, LLC, and Baltic Latvian Universal Electronics, LLC (collectively “Blue Microphones”), CDW Corporation, CDW, Inc., and CDW LLC (collectively “CDW”), Cobra Digital, LLC (“Cobra Digital”), CompUSA.com, Inc., New CompUSA Corporation, and Systemax, Inc. (collectively “CompUSA”), Creative Labs, Inc. (“Creative”), Dell, Inc. (“Dell”), Digital Innovations, LLC (“Digital Innovations”), Fry's Electronics Inc. (“Fry’s”), Gear Head, LLC (“Gear Head”), Hewlett-Packard Company (“HP”), jWIN Electronics Corporation (“jWIN”), KMart Corporation (“KMart”), Lifeworks Technology Group, LLC (“Lifeworks”), Macally Peripherals, Inc. and Mace Group, Inc. (collectively “Macally”), Micro Electronics, Inc. (“Micro Center”), Newegg, Inc. and Newegg.com, Inc. (collectively “Newegg”), Office Depot, Inc. (“Office Depot”), Overstock.com, Inc. (“Overstock”), Phoebe Micro Inc. (“Phoebe”), Rosewill Inc. (“Rosewill”), Sears Brands, LLC, Sears Holdings Corporation, and Sears, Roebuck and Company (collectively “Sears”), Sakar International, Inc. (“Sakar”), Target Corp. (“Target”), TigerDirect, Inc. (“TigerDirect”), Wal-Mart Stores, Inc. (“Wal-Mart”), Best Buy Co Inc., Best Buy Stores, LP, and BestBuy.com, LLC (collectively “Best Buy”), Kohl’s Corporation, and Kohl's Illinois, Inc. (collectively “Kohl’s”) hereby move¹ to sever and stay claims against certain defendants (the “Resellers”)² which are accused of patent infringement relating to products supplied, directly or indirectly, by the other defendants named in Plaintiff’s complaints (the

¹ Defendant Jasco Products Company LLC (Jasco) has indicated that it is in the process of settling with AdjustaCam, and will therefore not join the motion. Defendants Radio Shack Corporation, J&R Electronics (“J&R”) and Conn’s, Inc. (“Conn’s”) have indicated that, although they do not join the motion, they also do not oppose the motion nor the relief sought.

² “Resellers” refers to the following defendants: Amazon, CDW, CompUSA, Dell, Fry's, KMart, Micro Center, Newegg, Office Depot, Overstock, Sears, Target, TigerDirect, Wal-Mart, Best Buy, Conn's, J&R, and Kohls.

“Suppliers”) under the “customer suit” exception as articulated in *Katz v. Lear Siegler, Inc.*, 909 F.2d 1459, 1464 (Fed. Cir. 1990).

I. INTRODUCTION

The Court should exercise its discretion to sever and stay the claims against the Reseller defendants involving products purchased from the Suppliers, following the “customer suit” exception. The fact that the instant proceeding is still in an early stage supports granting a stay because there will be no issue of wasted discovery or scheduling disruptions. Granting a stay under the “customer suit” exception would simplify the issues of this case for two reasons. First, the Resellers are mere customers of the Suppliers, and thus only peripherally involved in this lawsuit which concerns the Suppliers’ products. Second, adjudication of the claims against Suppliers will also dispose of the claims against the Resellers that relate to the Suppliers’ products. Significantly, granting the motion would dispose of all claims for at least 15 Resellers (specifically, Amazon, CDW, CompUSA, Dell, Fry’s, KMart, NewEgg, Office Depot, Sears, Target, Wal-Mart, Best Buy, Conn’s, J&R, and Kohl’s). Furthermore, Plaintiff has dismissed without prejudice its infringement claims against the Suppliers of the Ezonic EZCam Plus Webcam and ProLinkz PWC-010 products. These are the only products for Resellers Overstock and TigerDirect not associated with a Supplier currently accused of infringement by AdjustaCam. Consequently, the Court should also sever and stay all claims against Resellers Overstock and TigerDirect because these Suppliers are absent only as a result of AdjustaCam’s unilateral decision to dismiss these Suppliers. In any event, granting the motion would dispose of all claims except one product for the other 3 Resellers (Micro Center, Overstock, and TigerDirect) which would significantly narrow the scope of the case even as to those Resellers. (See Exh. A, Table showing accused Resellers’ products and relation to Suppliers also accused

by AdjustaCam). There will be no prejudice to Plaintiff AdjustaCam LLC (“AdjustaCam”) because it will be free to litigate its claims against the Suppliers, and, if it can recover anything at all, its recovery from the Suppliers will exhaust any claims against downstream customer, including the Resellers.

II. BACKGROUND

AdjustaCam alleges to be the present exclusive licensee of, and owner of all substantial rights to, United States Patent No. 5,855,343 (“the ‘343 Patent”), entitled “Camera Clip.” First Amended Complaint (Docket No. 111) at ¶ 61. The claims of the ‘343 Patent are alleged to cover a type of clip for webcams. *Id.* at ¶ 62.

The Suppliers directly or indirectly provide the Resellers with various models of webcams having clips that AdjustaCam accuses of infringing the ‘343 Patent. In other words, for the Suppliers’ products, AdjustaCam has asserted claims against two links in the supply chain for a single product. For example, a typical supply chain may consist of the manufacturer, who provides products to a central distributor, who then provides those products to a secondary distributor, who then sells those products to the ultimate reseller (typically a retailer), which is an entity that sells the products to consumers, businesses, or other end users. The Suppliers are the primary, or earlier, link in the chain of commerce for the accused products (generally, either manufacturers or central distributors). The Suppliers here may be manufacturers or central distributors, but in either case, the Supplier is the source of the product for the Reseller. The Resellers are customers of the Suppliers and are not in the business of importing, designing or manufacturing the products. Rather, the Resellers constitute a secondary or downstream link in the chain of commerce, purchasing their entire inventory from upstream providers such as the

Suppliers, and then reselling the products (in this case, webcams) to the ultimate consumers, or “end-users.”

AdjustaCam has asserted infringement of the ‘343 Patent in this suit against 33 defendant groups, including the above named Suppliers and Resellers. Specifically, AdjustaCam alleges that the Suppliers have infringed the ‘343 Patent by importing, making, using, selling and/or offering to sell apparatuses embodying the ‘343 Patent. *See* First Amended Complaint at ¶ 58. AdjustaCam also alleges infringement against the Resellers for selling and/or offering to sell apparatuses embodying the ‘343 Patent. *Id.* As the Complaint makes clear, to the extent the Resellers are accused of selling and/or offering to sell products provided to them by the Suppliers, the Suppliers are accused of infringing with respect to exactly the same products.³ Thus, there is no question in this context that the claims against the Resellers are entirely peripheral to this suit.

III. ARGUMENT

A. This Court Has Broad Discretion to Stay All or Part of the Proceedings

This Court has broad discretion to grant a stay in pending litigation as part of its inherent power to control its own docket. *Landis v. N. Am. Co.*, 299 U.S. 248, 254-55 (1936) (“The power to stay proceedings is incidental to the power inherent in every court to control the disposition of

³ The Suppliers of the Minoru and Hercules branded products are not defendants in this action although Minoru and Hercules branded products are accused as to some Resellers in this action. However, in a related case pending in this Court, AdjustaCam asserts the ‘343 patent against, among other defendants, Promotion and Display Technology Ltd (“PDT”) and Guillemot Corporation, S.A. and Guillemot, Inc. (collectively “Guillemot”), the Suppliers of the Minoru branded webcams and Hercules branded webcams, respectively. (See *AdjustaCam v. Atlanta Network Technologies, Inc., et al.*, Civil Action 6:10-cv-644-LED, Docket No. 1 (E.D. Tex. Dec. 2, 2010) (Exh. B) at ¶¶ 33, 36). Claims against Resellers as to these products should also be stayed for the same reasons stated herein.

causes on its docket with economy of time and effort for itself, for counsel, and for the litigants”). In determining whether to grant a stay, a court will typically consider three factors:

- 1) [W]hether a stay will unduly prejudice or present a clear tactical disadvantage to the nonmoving party,
- 2) whether a stay will simplify the issues in question and the trial of the case, and
- 3) whether discovery is complete and whether a trial date has been set.

Soverain Software LLC v. Amazon.com, Inc., 356 F.Supp. 2d 660, 661 (E.D. Tex. 2005) (Davis, J.). In this case, all three factors weigh in favor of granting a stay as to the claims against Resellers.

As an initial matter, the third factor clearly supports a stay. This case is still in its early stages, no trial date has been set, no discovery has occurred, and no scheduling order has been entered. *See, e.g., Tesco Corp. v. Weatherford Int’l, Inc.*, 599 F.Supp. 2d 848, 853 (S.D. Tex. 2009) (holding that the third *Soverain* factor weighed in favor of a stay because “the case has just begun, no trial date has yet been set,” and no scheduling order had been entered).

The first and second *Soverain* factors also clearly favor granting a stay. For the sake of logic, these two factors are discussed in reverse order below, and they make clear that a stay would greatly simplify the issues of this case, and no prejudice to AdjustaCam will result from a stay.

B. A Stay Will Simplify the Issues of This Case

1. The “Customer Suit” Exception is Applicable, and Would Simplify the Issues by Staying Claims as to Resellers

The “customer suit” exception reflects a preference in the law that infringement suits involve the parties directly responsible for bringing accused products to market, such as manufacturers or distributors, instead of their customers, who are only secondarily involved. *See*

Katz v. Lear Siegler, Inc., 909 F.2d 1459, 1464 (Fed. Cir. 1990) (“litigation against or brought by the manufacturer of infringing goods takes precedence over a suit by the patent owner against customers of the manufacturer”). Thus, where a patent holder has sued both the manufacturers or distributors as well as their reseller customers, it is preferable to stay the customer claims while allowing the claims against manufacturers or central distributors to proceed first. *See, e.g., Katz*, 909 F.2d at 1464 (affirming stay of proceeding against dealers pending resolution of proceeding against manufacturers); *Refac Int’l, Ltd. v. IBM*, 790 F.2d 79, 81 (Fed. Cir. 1986) (holding that an appeal of a district court’s order to stay claims against customers was frivolous). The exception is also an effective case management tool for simplifying proceedings with a large number of defendants. *Refac*, 790 F.2d at 81 (partial stay of claims against customer defendants where there were 31 total defendants was “sensible judicial management”). This practice is premised on “the recognition that, in reality, *the manufacturer is the true defendant* in the customer suit... [I]t is a simple fact of life that a manufacturer must protect its customers, either as a matter of contract, or good business, or in order to avoid the damaging impact of an adverse ruling against its products.” *Id.* (emphasis added), quoting *Codex Corp. v. Milgo Elec. Corp.*, 553 F.2d 735, 737-38 (1st Cir. 1977).

For the purposes of the exception, there is no meaningful distinction between manufacturers and central distributors/importers, because central distributors also act as the first link in the chain that provides products to the relevant market. *See, e.g., Rhode Gear U.S.A. v. Frank’s Spoke N. Wheel, Inc.*, 225 U.S.P.Q. 1256, 1259 (D. Mass. 1985) (finding that an importer that was the “source of the allegedly infringing products in this country” to be “in the same position as a manufacturer,” and therefore applying the “customer suit” exception); *LG Elec., Inc. v. Asustek Computers*, 126 F.Supp. 2d 414, 422 (E.D. Va. 2000) (“[u]ltimately, the

infringement claim against the manufacturer and central distributor is more likely to restore [patent rights] than enjoining [a single downstream retailer]”).

a. AdjustaCam’s Claims Against Resellers are Merely Peripheral to This Suit

In the instant matter, case law shows that the Resellers are not “true defendants” contemplated under the “customer suit” exception because the Resellers are downstream in the supply chain from the Suppliers, and thus the claims against the Resellers are peripheral to the allegations of patent infringement for the Suppliers’ products. *See, e.g., Shifferaw v. Emson USA*, 2010 U.S. Dist. LEXIS 25612 at *8 (E.D. Tex. Mar. 18, 2010) (Everingham, J.) (Exh. C) (discussed *infra*), citing *LG Elec.*, 126 F.Supp. 2d at 422 (“[a] patent infringement claim against a distributor is peripheral to a claim against the manufacturer”); *LG Elec. Inc. v. First Int’l Computer, Inc.*, 138 F.Supp. 2d 574, 585 (D.N.J. 2001) (“[a] patent infringement claim against a reseller is peripheral to a claim against the manufacturer and central distributor”).

Unlike customers, “true defendants” to infringement have some upstream control over the accused products, either through designing and manufacturing the accused products, or by otherwise acting as the first link in the commercial chain, i.e. the upstream provider of the products. *See Microsoft Corp. v. Commonwealth Scientific & Industrial Research Org.*, 2007 WL 4376104 at *2, (E.D. Tex. Dec. 2007) (Davis, J.), (the “customer suit” exception prefers infringement suits to be “involving the true defendant in the plaintiff’s suit, i.e., the party that controls the product’s design, rather than in suits involving secondary parties, i.e. customers”); *see Rhode Gear*, 225 U.S.P.Q. at 1259 (the upstream importer of accused products is not like resellers who are “peripheral” to the infringement). By contrast, where a customer’s allegedly infringing conduct consists solely of “the resale of products” purchased from an upstream

provider, the claims against these customers are merely peripheral to an infringement suit. *See e.g., Shifferaw*, 2010 U.S. Dist. LEXIS 25612 at *8. Thus, the “customer suit” exception may properly be applied to stay claims against customers who only deal in, or resell, products purchased from others. *See Katz*, 909 F.2d at 1464 (affirming application of “customer suit” exception to stay claims against customers who were “dealers in infringing goods of several manufacturers”).

The Eastern District of Texas recognized this distinction in *Shifferaw v. Emson USA*, 2010 U.S. Dist. LEXIS 25612 at *8. In *Shifferaw*, the patent holder instituted suit against both the manufacturer of an accused product as well as its customers, Amazon and Academy. *Id.* at *2. The defendants moved to sever the claims as to the customers, arguing that, as mere retailers, they were not the true parties in interest. *Id.* The court agreed, noting that the retailers’ “only relevant conduct” was in reselling products purchased from the primary parties in interest. *Id.* at *9-10. On this basis, the court found that the retailers are “only peripherally involved,” and held that severance of these claims was proper. *Id.*; *see also LG Elec. Inc.*, 138 F.Supp. 2d at 585 (holding that the claims against a reseller are peripheral because the reseller’s only activity was to resell products purchased from the manufacturer and central distributor).

Here, the Resellers’ situation is identical to that of the retailers described in cases like *Shifferaw*. As in those cases, the Resellers are involved in this suit because they have resold products purchased from the Suppliers. Thus, the Resellers cannot be “true defendants” for the Suppliers’ products. As a clear case in point, one of the retailers described in *Shifferaw*, Amazon, is also one of the Resellers in this case. While the names of the Suppliers from whom Amazon receives its products have changed, Amazon’s role in the chain of commerce with respect to the

accused products is identical. Therefore, just as Amazon and its *Shifferaw* co-retailers were found to be only “peripherally involved,” so should the Resellers be in this case.

b. Adjudication Against Suppliers Will Dispose of the Major Issues Against Resellers as to Suppliers’ Products

The “customer suit” exception would simplify the issues in this case because adjudication of the claims against the Suppliers will also dispose of the issues involving the same products against Resellers. *See Katz v. Lear Siegler, Inc.*, 909 F.2d 1459, 1464 (Fed. Cir. 1990).

In *Katz*, the Federal Circuit found that allowing non-customer claims to proceed first would dispose of the issues of patent infringement and validity as to the customers as well. *Id.* The customers in *Katz* were “dealers in infringing goods of several manufacturers.” *Id.* The plaintiff had asserted the same patent against these customers as it had against the manufacturers, for the same products. *Id.* at 1460. Thus, the customers would not be liable for infringement if the manufacturers’ products were found not to have infringed, and they would be exonerated if the manufacturers could prove invalidity. *See id.* at 1464; *see also Shifferaw*, 2010 U.S. Dist. LEXIS 25612 at *10 (“[i]f [the manufacturer] is not found liable, then [plaintiff] has no claims against the Retailer Defendants [whose only infringing conduct is selling manufacturer’s products]”). The Court held that it did not matter that the customers had not agreed to be bound by the result against manufacturers, nor did it matter that there may be “additional issues” involving only the customers. *Id.* It sufficed for purposes of the “customer suit” exception that the “major issues” of infringement and validity would be resolved. *See id.*

A court may also find that adjudication against manufacturers will dispose of the major issues where the claims alleged against both manufacturers and customers read identically. *See Ultra Products., Inc. v. Best Buy Co.* 2009 U.S. Dist. LEXIS 78678 at *17-18 (D.N.J. 2009)

(Exh. D). Although the court in *Ultra* recognized that it was possible for there to be some issues particular to the customers, it nonetheless found that there was substantial identity of the issues through a comparison of the complaints against manufacturers and customers. *Id.* at *17. The court noted that the patent holder had uniformly alleged “that both the manufacturers and their various customers, aid, abet, and otherwise induce the infringement [of plaintiff’s patent],” such that “a comparison of the complaint filed [against the customers with that against manufacturers] reveals nearly identical allegations.” *Id.* Thus, the court found the issues involving customers to be “very similar, if not identical, to the issues as to the respective manufacturers.” *Id.* at *18. Under such circumstances, “it makes sense for the case against the actual manufacturers [of accused products] to proceed first.” *Id.*

Applying the “customer suit” exception to stay claims against the Resellers would have the same effect as that described in *Katz* and *Ultra*. Just as the patent holders had done in *Katz*, in this case AdjustaCam has asserted the *same* patent against the *same* products as between the both the Suppliers and Resellers. Because the Resellers’ only relevant conduct is buying and selling the Suppliers’ products, liability of the Resellers is premised on whether the products made or imported by the Suppliers are found to infringe. Furthermore, just as in *Ultra*, a comparison of the counts alleged against the Resellers to the counts alleged against the Suppliers show that they are essentially identical. Compare, e.g., First Amended Complaint ¶¶ 63-64 (counts against Amazon, one of the Resellers) with ¶¶ 111-112 (counts against HP, one of the Suppliers), (allegations against Resellers and Suppliers are identical with the obvious exception that Resellers are not alleged to make or import the accused products). Thus, just as in *Ultra*, it “makes sense” to allow the claims against the Suppliers to proceed first.

Even if staying these claims against the Resellers does not absolve them as to products not purchased directly from the Suppliers joining this motion, the rationale underlying cases such as *Katz* and *Ultra* still applies. The fact that the Resellers cannot be liable if no infringement is found against Suppliers remains unchanged. Likewise, the fact that the Resellers cannot be liable if the patent is found invalid in the action against Suppliers also remains unchanged. Neither *Katz* nor *Ultra* expressly predicated their holdings on being able to remove all customers from the case. Rather, the *Katz* and *Ultra* courts emphasized removal of *identical issues* as the ground for applying the “customer suit” exception. *See Katz*, 909 F.2d at 1464; *see Ultra*, 2009 U.S. Dist. LEXIS 78678 at *18. Therefore, the exception should also be applied in this case.

2. *The “Customer Suit” Exception Would Simplify a Single Proceeding Against Numerous Upstream Providers and Their Customers*

The “customer suit” exception would simplify a single, comprehensive suit against numerous upstream providers and their customers. *See Refac*, 790 F.2d at 81. In *Refac*, the Federal Circuit upheld a district court’s order to separate 31 customer defendants from six manufacturer defendants during the liability stage, and further staying the proceedings against the customers. *Id.* The Court cited “sensible judicial management” as a ground for upholding the order, taking note of the fact that the order simplified the ponderous proceeding that would otherwise take place. *Id.*

The customer suit exception should also be applied to stay claims against the Resellers because the circumstances of this case are analogous to those of *Refac*. Just as in *Refac*, this case involves a comprehensive suit by AdjustaCam against both the upstream providers of the accused products as well as their customers, the Resellers. AdjustaCam has asserted infringement by no less than 69 products and against a total of 33 defendants, of whom 18 are participants

only by virtue of their reseller capacity. Thus, it is clearly within this Court's discretion to simplify the instant proceedings using the "customer suit" exception. Granting a stay as to the claims against Resellers would simplify a liability determination by eliminating the duplicative issues with regard to the same products. (*See* Exh. A, Table showing accused Resellers' products and relation to Suppliers also accused by AdjustaCam). Accordingly, staying the claims against Resellers would be "sensible judicial management." *See Refac*, 790 F.2d at 80.

C. AdjustaCam Will Be Neither Prejudiced Nor Tactically Disadvantaged by a Stay

AdjustaCam will not be prejudiced or tactically disadvantaged if this Court grants a stay as to the claims against Resellers.

First, AdjustaCam may still litigate the same issues if the claims against the Resellers are stayed. As discussed above, the Resellers are only peripherally involved in AdjustaCam's allegations of infringement. Furthermore, the issues as to non-infringement and invalidity are identical as between the Suppliers and Resellers with respect to the same products, such that adjudication of claims in favor of the Suppliers would dispose of these issues against Resellers as well. Indeed, a stay would benefit AdjustaCam by eliminating duplicative discovery expenses relating to the Resellers.

Even if there were issues involving only the Resellers, AdjustaCam would not be prejudiced or disadvantaged by having the major issues of infringement and validity resolved first – rather, resolution of these threshold issues will advance adjudication of these latter issues, or alternatively conserve resources by rendering them moot. *See, e.g., Katz*, 909 F.2d at 1464 (affirming a stay of proceedings against dealers of manufacturers' products, "[a]lthough there

may be additional issues [involving the dealers' proceeding], their prosecution will be advanced if [manufacturer] is successful...and may well be mooted if he is unsuccessful").

Second, in the unlikely event that AdjustaCam recovers at all with respect to its claims, it will be limited to a single recovery, and cannot collect from both the Suppliers and Resellers for the same products. *See Shifferaw*, 2010 U.S. Dist. LEXIS 25612 at *10-11 ("If [manufacturer] is found liable and [plaintiff] collects damages from [manufacturer], then the plaintiff cannot then in turn collect damages from the Reseller Defendants, because [plaintiff] cannot receive a double recovery for the same sales"); *see also Thibodeaux v. Fibreboard Corp.*, 706 F.2d 728, 729 (5th Cir. 1983) ("[A]n injured plaintiff is entitled to only one satisfaction for the full amount of his damages"). Furthermore, AdjustaCam itself has recognized that it can only collect once from the upstream provider – when AdjustaCam settled its claims against Trippe Manufacturing Company ("Trippe"), all Trippe's downstream resellers were informed that the claims as to Trippe's products had been resolved. (*See* Exh. E, Letter from Trippe to its resellers regarding settlement of claims against Trippe products). Thus, AdjustaCam cannot deny that it will suffer no prejudice or disadvantage as a result of a stay.

IV. CONCLUSION

For the foregoing reasons, Defendants respectfully request that this court stay the claims against Reseller defendants that involve products made by the Suppliers, pending resolution of the claims against said Suppliers.

DATED: January 13, 2011

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing document was filed electronically in compliance with Local Rule CV-5(a). As such, this notice was served on all counsel of record who have consented to electronic service as this district requires. Local Rule CV-5(a)(3)(A).

/s/ Steven R. Daniels

CERTIFICATE OF CONFERENCE

The parties have conferred regarding the relief sought through this motion and have been unable to reach an agreement. Attorneys for movants, including myself, and attorneys for AdjustaCam, including Mr. John Edmonds, met and conferred via teleconference on December 27, 2010, but were unable to reach agreement. Attorneys for movants, including myself, and attorneys for AdjustaCam, including Mr. John Edmonds, again met and conferred via teleconference on December 30, 2010, but were again unable to reach agreement. Attorneys for movants, including Mr. Steven R. Daniels and myself, and attorneys for AdjustaCam, including Mr. John Edmonds, exchanged correspondence regarding this motion from January 6, 2010 to January 10, 2010, but were unable to reach an agreement. Attorneys for movants, including myself, and attorneys for AdjustaCam, including Mr. John Edmonds, again met and conferred via teleconference on January 10, 2010, and agreed that the parties could not agree and that the discussions had reached an impasse. Unfortunately, therefore, the parties are at an impasse and this motion requires Court intervention. Besides AdjustaCam, I have conferred with counsel for all other parties in this action, and counsel for all other parties have represented that they either join this motion or do not oppose the motion and the relief sought.

/s/ Bryan D. Atkinson